

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

JUL 19 2011

In re Matter of	)	
	)	
Revision of Part 22 of the	)	CC Docket No. 92-115
Commission's Rules Governing	)	
the Public Mobile Services	)	
	)	
Amendment of Part 22 of the	)	CC Docket No. 94-46
Commission's Rules to Delete	)	RM 8367
Section 22.119 and Permit the	)	
Concurrent Use or Transmitters	)	
in Common Carrier and Non-Common	)	
Carrier Service	)	
	)	
Amendment of Part 22 of the	)	CC Docket No. 93-116
Commission's Rules Pertaining to	)	
Power Limits for Paging Stations	)	
Operating in the 931 MHz Band in	)	
the Public Land Mobile Service	)	

TO: The Commission

**PETITION FOR RECONSIDERATION**

Pac-West Telecomm, Inc. ("Pac-West") and PagePrompt USA ("PagePrompt"), by counsel and pursuant to Section 1.429 of the Commission's rules, hereby jointly submit a Petition for Reconsideration of the Commission's Report & Order, 9 FCC Rcd \_\_\_\_ (FCC 94-201) (1994), ("Report & Order") in the above-captioned proceeding in which Part 22 of the Commission's Rules was comprehensively rewritten. The point on which Pac-West and PagePrompt seek reconsideration is not a prohibitive rule, per se, under Part 22, but rather is certain language contained in the Report & Order which was not promulgated as part of a specific rule section. In support of reconsideration, the following is respectfully shown:

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## I. INTRODUCTION

1. In the Report & Order, the Commission recognized the public interest benefits of permitting a licensee to install a multi-channel transmitter ("MCT") at a site where more than one channel is authorized. Id. at ¶¶ 43-44. Specifically, the Commission agreed with the commenters' arguments that the use of MCTs can enhance other service offerings by a licensee and facilitate the introduction of mobile services in the marketplace. Id. at ¶ 44. In the connection with approving the use of MCTs, the Commission also deleted former Section 22.119 of the Rules, which had prohibited a licensee from concurrently using the same transmitter to provide both Part 22 common carrier service and Part 90 non-common carrier service. Id. at ¶¶ 67-70. The deletion of Section 22.119 permits a licensee which is authorized to provide common carrier and non-common carrier service to install and use an MCT capable of transmitting on both its Part 22 and Part 90 channels.

2. However, in paragraph 71 of the Report & Order, the Commission stated as follows:

Finally, we do not believe that it is in the public interest to allow two different licensees to share the same transmitter. We are concerned that the shared use of the same transmitter by two different licensees may raise questions regarding the control and responsibility for the transmitter. We are also concerned about the broader service disruptions that outages of shared transmitters would cause.

In light of the fact that paragraph 71 is included in that portion of the Report & Order regarding the use of MCTs by a single licensee providing concurrent Part 22 and Part 90 services, it could be assumed that the Commission's concern extends only to different licensees sharing an MCT, one of which is providing Part 22 service and one

of which is providing Part 90 service. Out of an abundance of caution, however, Pac-West and PagePrompt interpret the language in paragraph 71 as pertaining to different licensees sharing an MCT, both of which are providing Part 22 service.

## **II. PUBLIC INTEREST CONSIDERATIONS**

3. Pac-West and PagePrompt are independently owned and managed entities, maintaining separate subscriber lists, distribution channels, marketing, and pricing. Pac-West and PagePrompt submitted joint comments and joint reply comments in the portion of the above-captioned proceeding under CC Docket No. 92-115.<sup>1/</sup> In their comments, Pac-West and PagePrompt briefly described their agreement to share the use of MCTs at certain base station locations, and advocated this practice by independent licensees because of the public interest benefits. Pac-West operates a wide-area one-way paging system on 931.5375 MHz primarily throughout California and Nevada, as well as in eight other states.<sup>2/</sup> PagePrompt operates a wide-area one-way paging system on 931.5625 MHz, primarily throughout California and Nevada, as well as in seven other states.

4. In order to achieve economies of scale as relatively new paging systems, they jointly operate independently licensed dual-frequency transmitters at certain locations. Pac-West and PagePrompt have been able to improve their respective paging services

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<sup>1/</sup> Their Joint Comments were filed October 5, 1992, and Joint Reply Comments were filed November 5, 1992.

<sup>2/</sup> Strategic Products Corporation ("Strategic") is commonly-owned with Pac-West and holds licenses and construction permits for 931.5375 MHz base stations in states other than California and Nevada. For convenience, Pac-West and Strategic are collectively referred to herein as Pac-West.

to the public by their use of MCTs. Their customers ultimately benefit from the licensees' lower aggregate capital investment and operating costs per site.

5. The shared transmitter arrangement promotes competition in the marketplace which is inherently in the public interest by improving quality of service standards and maintaining fair pricing practices. This arrangement between Pac-West and PagePrompt exists on an interim basis until they can afford the high costs of installing dedicated 900 MHz transmitters at each of their respective sites. In fact, as paging traffic increases for each licensee, whichever licensee owns the transmitter at a particular site will be forced to convert its MCT to a dedicated transmitter and the other licensee will add a dedicated transmitter at the site. The approximate cost of a dedicated 900 MHz transmitter is \$25,000. The installation of dedicated transmitters at the sites where they currently do not own transmitters would cost Pac-West approximately \$850,000, and PagePrompt approximately \$1,200,000.<sup>3/</sup>

### **III. THE COMMISSION COULD TAKE OTHER MEANS TO ALLEVIATE ANY QUESTIONS OF CONTROL**

6. The sharing arrangement between Pac-West and PagePrompt is not the only such arrangement in effect in the industry. Pac-West and PagePrompt are aware that other licensees would like to benefit by entering into such agreements but hesitate to do so because of paragraph 71 of the Report & Order. The Commission need not

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<sup>3/</sup> Pac-West and PagePrompt are filing in the near future a request for waiver of the prohibition against the sharing arrangements described in paragraph 71 of the Report & Order, supra. In light of the financial burdens described herein, Pac-West and PagePrompt respectfully request that the Commission stay the effective date of the prohibition for three to five years to allow for the financing, equipment acquisition and labor involved.

prohibit all shared use of MCTs by independent licensees because such use "may raise questions regarding the control and responsibility for the transmitter." Report & Order at ¶ 71 (emphasis added).

7. Instead, in order to alleviate any potential concerns, the Commission could issue guidelines which licensees would have to follow to ensure proper control is maintained. In the alternative, the Commission could require that licensees contemplating an arrangement to share MCTs provide the Commission staff with the proposed terms of the arrangement for review and approval. The Commission should recognize, and indeed could mandate, that such arrangements would exist on an interim basis only.

#### CONCLUSION

For the foregoing reasons, Pac-West Telecomm, Inc. and PagePrompt USA respectfully request that the Commission reconsider its Report & Order with respect to paragraph 71 and delete paragraph 71.

Respectfully submitted,

**PAC-WEST TELECOMM, INC.**

and

**PAGEPROMPT USA**

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